

IN THE HIGH COURT OF ORISSA AT CUTTACK

**ARBA No.15 Of 2004
(Through hybrid mode)**

Bharat Sanchar Nigam Ltd.

....

Appellant

Mr. S.K. Pattnaik, Advocate

-versus-

Sri D.D. Champati Ray

....

Respondent

Mr. S. Nath, Advocate

CORAM: JUSTICE ARINDAM SINHA

**Order
No.**

**ORDER
15.03.2022**

16. 1. Mr. Pattnaik, learned advocate appears on behalf of appellant and submits, challenge to the award was erroneously rejected by impugned order dated 23rd March, 2004. He straightaway draws attention to letter dated 28th May, 1996, by which his client (employer) awarded the work under contract saying as follows.

“Your lowest tender for the work mentioned above has been accepted on behalf of the president of India at your tendered percentage at 119.91% above the estimated cost of Rs.2,81,830.00 tendered amount Rs.6,19,780.00 (Rupees six lakh nineteen thousand seven hundred eighty) only and has been registered as contract No.13/TCDC of 1996-97.

You are requested to attend this office to

complete the formal agreement with in seven days of receipt of this letter.

You are also directed to start the work at once. Please note that the time allowed 4(four) months for carrying out the work as entered in the tender shall be reckoned from the fifteenth day after the date of this order to commence the work.

Thanking you.”

He submits, the award was pursuant to notice inviting tender giving the terms. He refers to clauses 2, 3, 5, 10(CC), 14 and 18 to submit, time was essence of the contract and breach would entitle the employer to determine it. There was clause 5 regarding extension of time but same was not resorted to by the contractor. No application was made under the clause. In the circumstances, clause 10(CC) providing for escalation could not be invoked. Clause-14 entitled his client to claim compensation on bad work and clause-18 made it clear that contractor was to bring his own tools and effects for executing the work.

2. Referring to the award dated 26th December, 2000 he submits, inspite of said clauses staring in the face of the Tribunal, it went on to award. Claims for compensation on account of depreciation of tools and plants, idle labour and on off site expenses, loss of profit and escalation were awarded. On top of that there was award for release of security, works allegedly not recorded and extra works, thereupon

interest. He submits, as such in making the award the Tribunal did not take into account terms of the contract applicable to the transaction as mandated by sub-section (3) in section 28, Arbitration and Conciliation Act, 1996. In the premises there were good grounds in the challenge. The Court below erred in not appreciating them, to dismiss the same.

3. Mr. Nath, learned advocate appears on behalf of respondent and submits, his leader is unwell. There be granted adjournment. Court is not inclined to grant adjournment. He submits, there be no interference.

4. Perused the award. Finding of facts are that the work was agreed to be executed in time period four months. Stipulated commencement date was 12th June, 1996 and date of completion as on 11th October, 1996. The Tribunal found completion had been recorded by the employer on 19th January, 1997. The employer issued show cause for termination of the contract on 21st May, 1998 and thereafter rescinded the contract by letter dated 1st July, 1998. In these facts, the Tribunal found time was not essence of the contract. Taking the dates of commencement and completion, it went on to find duration of the contract was more than six months and thereupon applied clause-10(CC) in adjudicating the claims made thereunder, it appears from the award that only some of the claims were allowed, as partly

justified. Reasons were being given based on findings of fact. In the circumstances, the award does not appear to be against public policy was discloses patent illegality.

5. It follows that the learned Court below cannot be said to have erred in rejecting the challenge. Impugned judgment is confirmed.

6. The appeal is dismissed.

(Arindam Sinha)
Judge

Sks

